

**IN THE FAMILY COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

H----- L-,
Petitioner

vs.

Z----- Z----,
Respondent

FILE NO.: CN18-02553

CPI NO.: 18-17513
(Petition for Custody)
(Mother's Motion to Dismiss)

IN THE INTEREST OF:
E---- L- (d.o.b. 5/-/15)

CASE HISTORY:

Father's Custody Disclosure Report: 6/18/18
Order Dismissing Emergency Ex Parte Motion: 6/20/18
Mother's Parenting Class Certificate: 7/7/18
Order to Complete Testimony: 08/30/18
Rescheduling Order: 11/21/18
Interim Custody Stipulation: 12/11/18

PRESENT FOR HEARINGS:

H----- L-, Father
Patrick Boyer, Esq., Atty. for Father
Z----- Z----, Mother (by phone)
Brandon Spivey, Esq., Atty. for Mother
Adrian Chan, Court interpreter (day one)
Shuchen Huang, Court interpreter (day two)

**DECISION AND ORDER ON MOTHER'S MOTION TO DISMISS THE PETITION
FOR CUSTODY**

Hearings were held on August 9, 2018 and January 7, 2019 to address Z----- Z----'s (Mother) Motion to Dismiss challenging jurisdiction for the Petition for Custody filed on June 19, 2018 by H----- L- (Father) against Mother in regard to their minor child, E---- L-, born May -, 2015. Previously, on June 20, 2018, the Court *sua sponte* dismissed the Petition for lack of jurisdiction based on Father's disclosure that E---- had resided in Hong Kong with Mother for more than six months preceding the filing of Father's Petition. Then, on June 27, 2018, Father filed a Motion for Reargument on the Court's *sua sponte* decision. Thereafter, on July 16, 2018, Mother filed a Motion to Dismiss Father's Petition rather than simply an answer to Father's Motion for Reargument. At the end of July 2018, counsel for each party filed respective Responses to the Motions and the jurisdictional matter was scheduled for a full hearing. Following the conclusion of the two hearing dates, the parties presented written memoranda in support of their respective positions. The Court received Father's opening brief on January 22, 2019, Mother's answering

brief on February 6, 2019, and Father's reply brief on February 15, 2019. Mother and E---- currently reside in Hong Kong. As such, the Court granted the oral motion to allow Mother to participate by phone in these jurisdictional hearings, subject to credibility being raised as an issue. Testimony was taken from Father and Mother.

Jurisdictional Issue

Jurisdiction in interstate custody matters is determined by the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), codified at 13 *Del. C.* §§ 1901 *et seq.*¹ 13 *Del. C.* § 1920 sets forth four alternative bases by which the Court can assert initial jurisdiction: home state, significant connection/substantial evidence, more appropriate forum, or by default. The first enumerated basis of jurisdiction is the home state of the child. Pursuant to 13 *Del. C.* § 1920(a)(1), Delaware "is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this State." Under 13 *Del. C.* § 1902(7), the home state is defined as "the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child custody proceeding [...] A period of temporary absence of any of the mentioned persons is part of the period." Under Delaware Family Court Rule 3(a), an action is commenced when a petition is filed.

Here, Father filed his Petition for Custody on June 19, 2018 and he has continued to maintain his official residency in Delaware (despite remaining in Hong Kong/China from early October 2017 through early February 2018). Therefore, the Court must determine whether Delaware was E----'s home state either on June 19, 2018 or at any time in the preceding six months, between December 19, 2017 and June 19, 2018. It is uncontroverted that E---- was born in Delaware and remained in Delaware continuously for the first two plus years of his life, but that he has not lived here since October 11, 2017 aside from a brief stay in Delaware with Father in December 2018. Therefore, E---- resided exclusively in Hong Kong both on June 19, 2018, and between December 19, 2017 and June 19, 2018. As a result, the issue before the Court is whether E----'s time in Hong Kong from October 11, 2017 through December 19, 2017 should be considered a "temporary absence" from Delaware such that Delaware could still be determined E-

¹ Pursuant to 13 *Del. C.* § 1905, a "foreign country" is treated like "a state of the United States" for the purpose of determining jurisdiction under the UCCJEA.

---’s “home state” as of December 19, 2017 and Delaware could exercise home jurisdiction over this custodial matter.²

Background Facts

Mother and Father married on May 5, 2012, and divorced on March 12, 2019. The date of separation is a subject of dispute. In Mother’s Petition for Divorce filed on April 9, 2018, she noted that “[t]he parties physically separated on December 22, 2017.” In Father’s Answer filed on June 14, 2017, he noted that “[t]he parties did not legally separate until May 25, 2018 when [Father] was unexpectedly served with a Petition for Divorce.”

E---- was born in Delaware where the family lived together until August 2017 when Mother moved to Hong Kong for work. Two months later, Father brought E---- to Hong Kong on October 11, 2017 where the child has remained except for a two-week trip back to Delaware in December 2018. Father has continued to maintain his legal residence in Delaware but travels extensively for his business, especially to China.

Mother is employed as a financial advisor with BlackRock. Prior to her current assignment in Hong Kong, Mother worked for BlackRock in its Wilmington office from 2004 to 2014, and then in its Philadelphia office from 2014 to 2017. Father testified that, sometime after E----’s birth, Mother resumed being away from home about twelve hours per day for work. Mother is a U.S. legal permanent resident since February 2015 who has not lived in any other state in the United States than Delaware.

Father, a U.S. citizen for about two years, has been residing in Wilmington, Delaware for about seven and a half years. He continues to reside in the former marital home. He has been self-employed for about ten years importing optical equipment from China. He is headquartered in Delaware and the company is incorporated in Texas. He has a flexible schedule, which requires he be on the phone a couple hours a day and travel regularly to China. His primary business partner is in Chicago, Illinois, and his “important” clients are located outside of Delaware.

Mother attested that the parties first broached the topic of divorce in 2014 or 2015, while she was still pregnant with E----. She said the topic was brought up at times in 2016 and 2017,

²The Court notes that states have taken different positions on whether it is permissible under the UCCJEA to “look back” to six months prior to the commencement of the proceeding to determine if a state can be determined the home state on that date. *Compare Sarpel v. Eflanli*, 65 So.3d 1080 (Fl. Dist. Ct. App. 2011) with *Berg v. Somers*, 2013 WL 812183 (Conn. Sup. Ct. Jan. 31, 2013). However, the parties have not briefed that legal issue. But, the Court will adopt the approach taken by *Sarpel v. Eflanli* and look back six months from the commencement of the proceeding in conducting its “temporary absence” analysis.

prior to Mother's move to Hong Kong. The parties also began separating some of their finances in April 2017 such as when Mother set up an individual bank account for herself all while continuing her use of the parties' joint account.

Mother testified that she began considering a job transfer from Delaware to Hong Kong in 2016 and informed Father of this prospect shortly thereafter. Then, in March 2017, Mother reportedly received official confirmation that she would be transferred to Hong Kong. Two months later, on May 23, 2017, the parties submitted work permit applications for both Mother and Father requesting a two-year stay in Hong Kong starting in August 2017. Mother's Ex. #1 Thereafter, Mother moved to Hong Kong for a two-year lateral job transfer in August 2017. Father and E---- joined Mother in October 2017.

Temporary Absence from Home State

Under 13 *Del. C.* § 1902(7), a "period of temporary absence" from a home state does not disrupt the tolling of the statutorily required six months that make a state a child's home state. Temporary absence is not defined in the UCCJEA. Although the Court believes that Delaware courts have never definitely examined the issue before this judge,³ there is extensive case law coming out of other states that this judge has found to be persuasive.

Although some courts have determined "temporary absences" by focusing exclusively on the duration of the absence or the intent of the parties, Mother and Father agree that the "totality of the circumstances" test is the approach used by "most jurisdictions that have considered the issue."⁴ Because the evidence in this case suggests that the intent of each party may have changed at different points during the dispute and the Court declines to look solely at the duration of the absence from Delaware in part because Mother admits that she prevented Father from having contact with E---- for several months in early 2018, the Court will employ the "totality of the circumstances" test.

In their written memoranda on this issue, both Mother and Father analyzed the totality of the circumstances in this case under the twelve factors set out in a 2015 case from the Court of Appeal of Louisiana used for "establishing the temporary nature of a child's absence from a claimed home state."⁵ Those twelve factors are as follows:

³ The Court is only aware of Judge Keil's single five-page decision in *Deering v. Deering* on the issue of temporary absence. 1995 WL 782997 (Del. Fam. Ct. Apr. 26, 1995).

⁴ *In re Marriage of Schwartz and Battini*, 410 P.3d 319, 325 (Or. Ct. App. 2017) (citing to recent decisions from the Alaska Supreme Court and Maryland Court of Special Appeals and an article from the Journal of the American Academy of Matrimonial Lawyers).

⁵ *Baxter v. Baxter*, 171 So.3d 1159, 1172-73 (La. Ct. App. 2015).

1. *The purpose of the absence, such as a vacation, visitation with the other parent, a short-term work assignment, or caring for a sick relative.*

Mother moved to Hong Kong in August 2017 for a two-year work assignment with no specific plan to return to Delaware. Mother also testified that she plans to renew her two-year work visa when it expires in 2019 and remain in Hong Kong for the “immediate future.” Furthermore, both Father and Mother applied in May 2017 for a two-year Hong Kong work permit. E---- and Father joined Mother in October 2017. However, that was only after Father bought roundtrip plane tickets for himself and E---- between Philadelphia and Hong Kong for a defined period from October 11, 2017 until March 26, 2018. Father’s Ex. #2.

Father testified that Mother did not initially intend to remain in Hong Kong permanently, knowing that she could be transferred to other places like Shanghai or New York, and that Mother thought it important for E---- to receive his education in the United States, but that they agree that E---- could spend the winter months in the warmer Hong Kong climate. On the other hand, Mother argued that the parties agreed they were supposed to relocate to Hong Kong together as a family. Mother also stated that she believes that Hong Kong is a good place to raise her son and that it was her intent to raise E---- in closer proximity to his maternal and paternal relatives, who reside in Changzhou city, Jiangsu province⁶ and Hong Kong⁷ respectively, as compared to his having no paternal or maternal relatives in the United States.⁸

As additional evidence of the purpose of the stay in Hong Kong, Mother and Father toured preschools for E---- together while in Hong Kong in November or December 2017. Thereafter, they submitted application materials to at least two of those schools. On December 18, 2017, the parties were notified that E---- was accepted to attend Little Dalton Academy for the 2018-2019 school year. Mother’s Ex. #2 and 4. Father added that E---- was also accepted at two daycares in Delaware. However, Mother allegedly secured the Little Dalton enrollment for the 2018-2019 school year with a non-refundable deposit of \$60,000 Hong Kong dollars (which is about \$7,500 US dollars according to Mother).

⁶ According to Bing maps, Changzhou is about 950 miles north of Hong Kong. Mother testified that it takes two-and-a-half-hours to fly there.

⁷ According to Mother, Father’s brother’s family lives about a thirty-minute drive away from her apartment.

⁸ Although Mother initially visited Father’s family in Hong Kong a few times in 2017, she has not visited with them in 2018 since the parties’ separation. Although she did not state that she has visited her family in Jiangsu since her August 2017 relocation to Hong Kong, Mother stated that her closer proximity to her family would facilitate more frequent contact between her and E---- with her family.

Father alleged that when he and Mother applied to preschools, he believed it was only as a temporary arrangement and that he would be able to disenroll E---- at any time akin to the arrangement at E----'s daycares in the United States. Father also testified that he was not aware that, when E---- was accepted to Little Dalton Academy in December 2017, E---- would not begin attending until August 2018 because he allegedly never read the application materials or the acceptance email packet that Mother sent him on December 18, 2017 even though he delivered the material to the school.⁹ Furthermore, Father testified that he believed that the child would only attend school in Hong Kong until March 2018 and then resume attending school back in Delaware, and that he informed E----'s Delaware daycare that E---- would be returning after his temporary stay in Hong Kong.

2. *Any statements made by either party indicating the parties' agreement that the child's absence from the home state was intended to be temporary.*

Father asserted that Mother agreed to E----'s March 26, 2018 return date to Delaware before he purchased the airplane tickets on September 19, 2017. In separate text exchanges on WeChat from what appear to be September and October, 2017,¹⁰ while E---- was still in Delaware with Father, the parties wrote the following:

Mother: "Please tell me, when do you plan to let [E----] come over, is it a long stay?"

Father: I planned, to go to Hong Kong on 10/11/2017 – return on 3/26/2018. The main consideration elements are: 1. Weather, Hong Kong's weather during this period is better than Philadelphia's. 2. Holidays, This is a period with a lot of holidays. You will have more time to be with him.

...

Mother: Understood, I shall make arrangements.

...

Father: I must make things clear with you, and specify terms first. 1. [E----] goes to Hong Kong on a temporary basis. At the end of March next year, he will return to the U.S. to continue his education in America.

...

Mother: I will respect your opinions/ideas." Father's Ex. #3.¹¹

⁹ The Court notes for the record that the documents related to E----'s acceptance to Little Dalton Academy, Mother's Exhibits #2 and 4, do not expressly state when the 2018-2019 school year will begin, lending some credence to Father's assertion that he was not aware of when E---- was slated to begin attending that school in Hong Kong.

¹⁰ These text exchanges and the excerpt from the recorded conversation on page 7 below are certified translations from the original Mandarin Chinese into English.

¹¹ Mother agreed in the Court that she never informed Father in writing, following this exchange, that her intent was for E---- to remain in Hong Kong with her. However, she did say that she did tell Father verbally that this was her plan. Father testified that he sent the initial text message with the specific dates in September 2017 before he bought

Mother testified that she was not aware of the return tickets until at least January 2018 and that she only sent those two reply messages to Father, even though she did not agree to his terms, because she did not want to anger him since Father still had E---- in the United States at that time.

Several months after Father and E---- arrived in Hong Kong, the family went on a vacation in mainland China during which the parties allegedly had a physical confrontation. They returned to Hong Kong on or around December 23, 2017. Although, according to Mother, they had not talked about divorce since she had moved to Hong Kong in August, the topic resurfaced during the weeks that followed. Specifically, Mother testified that, between January 1 and January 3, 2018, Father kept trying to discuss the possibility of divorce, and that, if the parties separated, E-- -- would live with Mother. During one particular exchange on January 3rd, the parties said the following:

Mom: “You said you’ve [sic] done considering this, have you planned the details relating to a divorce? How to divorce?

Dad: Yow, thinking about details!

Mom: Fine, let’s talk about it, what about [E----]? What about each of our responsibilities?

Dad: Didn’t I tell you that? [E----] I don’t want. I told you that already.

Mom: Fine. [E----] belongs with me. What responsibilities are you shouldering?

Dad: Hm. Child support, giving enough. How much do you need? Say it.

...

Mom: How to proceed, when to divorce, clarify them all with me.

Dad: Reverse, reverse is fine too, I manage the kid, I know you definitely won’t accept it. OK, he also needs a mother’s love. I am looking out for his interest. I also know about your family norms. It’s up to you.”

Mother’s Ex. #3. Father testified that in making these statements he meant that E---- should live with Mother until March 2018 and thereafter return to the United States with Father. Father also testified that on January 4, 2018, before he left for a business trip that Mother verbally confirmed that she would permit Father to take E---- back to the United States in March 2018. Finally, on January 24, 2019, Father sent an email to Mother that indicates that Father’s intent at that time was for E---- to reside in Hong Kong half the year and in Delaware half the year.¹²

the plane tickets and that he sent the other text message about E----’s stay in Hong Kong being temporary in October 2017 before he and E---- departed Philadelphia for Hong Kong.

¹² “Regarding to the costs arisen in Hong Kong, I think we should think of it this way, since [E----] spends *half the time in the United States*, those expenses are definitely not on you.” Father’s Ex. #4. Italics added for emphasis.

3. *The absent parent maintained employment in the claimed home state.*

Mother's move to Hong Kong in August 2017 was for an internal job transfer within the same international company for which she had worked in Philadelphia and Wilmington previously. However, there is no evidence that Mother has plans to return to work for the company in the Delaware area but will go where her next transfer takes her.

4. *The absent parent had previously made extended visits to the same location and returned to the home state after such visits.*

There is no evidence that Mother previously made extended trips to Hong Kong only to later return to Delaware, only that she made one brief trip to Hong Kong in 2017 in anticipation of her move.

5. *The absent parent did not obtain permanent housing while out-of-state, but instead stayed with friends or relatives, stayed in a hotel, lived in company housing or on a military base, sublet an apartment, or entered into a short-term lease.*

Upon moving to Hong Kong, Mother signed a two-year lease for a three-bedroom apartment sufficient in size to accommodate the parties, E---- and a live-in nanny. When Father and E---- arrived in October, they stayed in the three-bedroom apartment together with Mother. E---- and a live-in nanny each had their own bedroom and Mother and Father shared a bedroom.

6. *The absent parent did not obtain a new driver's license or register a car out of state.*

Mother sold her car in Delaware and did not acquire a new car in Hong Kong. There is no evidence that she obtained new identification in Hong Kong other than her application for a two-year work permit. Despite being a Chinese citizen and moving back to Hong Kong for what she testified is at least two years, Mother remains a U.S. legal permanent residence who still plans to apply for naturalization as a U.S. citizen in 2020 when she becomes eligible. Mother does not believe that her prolonged absence from the United States will pose an insurmountable barrier to her permanent residence status or ultimate citizenship goal, based on the immigration assistance she is receiving from her employer's legal team. Mother also testified that she is aware of the U.S. Department of Homeland Security's policy with regard to lawful permanent residents who wish to stay outside of the United States for more than one year. Father's Ex. #5.

7. *The absent parent did not register to vote in the new state, and voted in the claimed home state by absentee ballot.*

This factor is inapplicable. Mother is a U.S. legal permanent resident. She cannot vote in Delaware.

8. *The absent parent did not change the address on his or her passport.*

Mother does not have a U.S. passport. There is no evidence that Mother changed any information with regard to her legal permanent resident card. Additionally, the permanent resident card itself does not reflect any information with regard to where she is residing in the United States. Father's Ex. #1.

9. *The absent parent maintained bank accounts in the home state.*

There is no evidence that Mother maintained bank accounts in Delaware.

10. *The absent parent paid taxes in the home state.*

No evidence was presented whether Mother paid taxes in Delaware in 2018. Since the parties were married until March 2019, the Court was not told if they filed a joint return for 2018.

11. *The absent parent continued to own or rent housing in the claimed home state.*

The parties placed the marital home on the market which thereafter was removed in July 2017 after a potential sale fell through. Father has decided to remain in the former marital home. Mother sold another Wilmington, Delaware home that she had owned since 2009 prior to moving to Hong Kong.

12. *The absent parent maintained close contact with friends and family in the home state.*

There is no evidence that Mother has maintained close contact with anyone in Delaware. In contrast, all her family lives in China.

Analysis

Most of the above totality of the circumstances factor are either inapplicable or there is no relevant evidence before the Court. That is in part, because the factors are clearly oriented toward an interstate custody dispute involving two U.S. citizens who reside in different states within the United States. However, of the above factors, the Court still gives considerable weight to factors

one (1) and two (2). In so doing, the Court notes that the issue before it in this case is not simply whether Mother's move from Delaware to Hong Kong was a temporary absence but whether E---'s stay with her from October 11, 2017 to December 19, 2017 (six months before Father filed his Petition for Custody) was a temporary absence. As to E----, this is a close case. Although the Court acknowledges that Father was involved, during the end of 2017, with finding a preschool program for E---- in Hong Kong that would not start until August 2018, the Court finds Father's testimony to be plausible that he did not know the start date of the school and, regardless, that he believed she could disenroll E---- from school just as Father stated he had done in Delaware before he brought E---- to Hong Kong in October 2017. However, based on the express language of the August and September 2017 WeChat messages between the parties, the Court does not find it plausible that Mother was unaware of Father's plan to return E---- to Delaware in March 2018. Additionally, the Court finds the documentary evidence of the roundtrip plane tickets between Philadelphia and Hong Kong with a return date of March 26, 2018 to be most persuasive in determining the totality of the circumstances as they existed between October 11, 2017 and December 19, 2017. Therefore, the overall weight of the evidence supports finding that E----'s time in Hong Kong from October 11, 2017 to December 19, 2017 was a temporary absence from Delaware such that Delaware was still E----'s home state "within 6 months before the commencement of the proceeding" necessary to invoke home state jurisdiction under 13 *Del. C.* § 1920(a)(1).

In reaching this conclusion, the Court finds similar facts and legal conclusions in both *Sarpel v. Eflanli* and *Ogawa v. Ogawa*. In *Sarpel*, a Florida district court found that it had home state jurisdiction even though the children had been in Turkey for the eight months that preceded the filing of the petition for custody because the children went to Turkey initially only for an extended vacation that they subsequently overstayed thereby rendering their time in Turkey a temporary absence from Florida.¹³ In *Ogawa*, the Nevada Supreme Court also found that it had home state jurisdiction even though the children had been in Japan for the eight months that preceded the filing of the petition for custody because the children went to Japan for the purpose of a three-month vacation that they subsequently overstayed thereby rendering their time in Japan a temporary absence from Nevada.¹⁴ Here, the parties exchanged written documentation prior to E----'s departure for Hong Kong that E---- would be in Hong Kong from October 2017 to March

¹³ 65 So.3d at 1084.

¹⁴ 221 R.3d 699, 704-05 (Nev. 2009).

2018. The fact that E---- remained in Hong Kong beyond March 2018 does not negate the fact that the initial plan was for him to be in Hong Kong only temporarily.

Having found that Delaware was E----'s home state within the statutory permitted time period, the Court briefly examines whether Delaware would be an inconvenient forum to litigate this matter under 13 *Del. C.* § 1926 now that E---- and Mother are in Hong Kong.¹⁵ Of the express statutory factors, the Court finds that factors seven (7) and eight (8) weigh significantly in favor of the Court resolving this matter.¹⁶ Requiring Father to file a new petition in Hong Kong, after all this time being before the Court in Delaware, would stand in stark contrast to the goal of deciding issues expeditiously.

Finally, the Court wishes to address another issue relevant to its conclusion on this jurisdictional matter. On January 4, 2018, as Father was leaving on a business trip, Mother asked Father to leave his apartment key and door card with her. He stated that he did not receive an explanation from Mother, but he asked if when he returned he could come see E----. When he returned on January 19, 2018, he was surprised that he was not allowed in the apartment building. Father said that beginning on that date, he called and emailed Mother on numerous occasions over the weeks that followed, without any reply from her. Father's Ex. #4. Father explained that he did not file for custody at that time because he wanted to resolve the issues within the family and he was not aware of the legal implications that might arise if he waited.

Father returned to the United States in early February 2018 and then flew back to Hong Kong later that month to continue trying to see E----. On February 27, 2018, Mother responded to

¹⁵ Pursuant to 13 *Del. C.* § 1926 (b): "Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

- (1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- (2) The length of time the child has resided outside this State;
- (3) The distance between the court in this State and the court in the state that would assume jurisdiction;
- (4) The relative financial circumstances of the parties;
- (5) Any agreement of the parties as to which state should assume jurisdiction;
- (6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
- (7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (8) The familiarity of the court of each state with the facts and issues in the pending litigation."

¹⁶ Mother filed her Petition for Divorce almost a year ago and requested the Court to retain jurisdiction over financial matters ancillary to the divorce. Father filed his Petition for Custody over nine months ago. Over that time, the Court has become very familiar with the parties both in the courtroom and through their filings, and this judge has recently also been assigned to resolve their financial matters ancillary to their divorce in Delaware. The Court is also optimistic that it can reach a final resolution on the custody matter in the next several months.

an email from Father, stating that she would allow him to see the child if he paid for half of her living expenses. On March 21, 2018, Father again asked Mother if he could take E---- back with him to the United States as “[she had] confirmed a few times.” Father’s Ex. #3. Finally, on April 3, 2018, he paid Mother \$15,000. Afterward, Mother allowed Father to see E---- on April 25, 2018, for the first time since January. Mother, in retrospect, stated that she should not have prevented contact.

Therefore, the Court expresses concern that between January 4, 2018 and April 25, 2018, Mother prevented Father from having any contact with E----, despite Father’s repeated efforts, thereby preventing Father from returning to Delaware with E---- on the March 26th return ticket he had purchased back in September 2017. Father’s Ex. #3 and 4. Requiring Father to file a Petition in Hong Kong would be in essence rewarding Mother for conduct that arguably triggers the “unjustifiable conduct” analysis under 13 *Del. C.* § 1927.

Court’s Rulings

1. Delaware has home state jurisdiction over Father’s Petition for Custody in the interest of E---- because E----’s stay in Hong Kong prior to the commencement of the proceeding was a temporary absence from Delaware.
2. Mother’s Motion to Dismiss Father’s Petition for Custody for lack of jurisdiction is ***DENIED***.
3. This matter will proceed promptly to a final custodial hearing on the merits. A case management teleconference for the purpose of setting a date for the final hearing will be scheduled as soon as possible.

IT IS SO ORDERED.

Date Written Order Issued

/S/ BARBARA D. CROWELL, JUDGE

Date Written Order Mailed

BDC/plr